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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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6
7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 WILLIAM GERARD SANGERVASI II,
12 an individual;

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE, a public government
16 entity;

17 EDGARDO GARCIA, as an individual, and
18 in his official capacity as the former Chief
19 of Police for the San Jose Police
20 Department;

21 ANTHONY MATA, as an individual, and in
22 his official capacity as the Chief of Police for
23 the San Jose Police Department;

24 and DOES 1 through 10, inclusive,

25 Defendants.
26
27
28

Case No. C 5:22-cv-07761-VKD

**PLAINTIFF'S NOTICE AND MOTION FOR
PRELIMINARY INJUNCTION,
AND MEMORANDUM IN SUPPORT**

DATE: March 21, 2023

TIME: 10:00 am

ROOM: Courtroom #2, 5th Floor

JUDGE: Hon. Virginia K. DeMarchi

TABLE OF CONTENTS

SECTION	Page
I. Notice of Motion	4
II. Relief Sought	4
Injunctive Relief	6
Conflicting Relief	7
III. Statement of the Issues to be Decided	8
IV. Memorandum in Support	8
Statement of Facts	8
Argument	11
Legal Standard	12
Success on the Merits	12
Irreparable Harm	20
Balance of Equities	21
Public Interest	21
Bond	23
Conclusion	24

TABLE OF AUTHORITIES

1		
2	1. <i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7, 20 (2008)	12
3	2. <i>Rosenberger v. Rector & Visitors of Univ. of Va.</i> ,	
4	515 U.S. 819, 828 (1995)	17
5	3. <i>Shurtleff v. Boston</i> , 596 U.S. (2022)	18
6	4. <i>Bonnell v. Lorenzo</i> , 241 F.3d 800, 809 (6th Cir. 2001)	21
7	5. <i>Boardman v. Pacific Seafood Grp.</i> ,	
8	822 F.3d 1011, 1024 (9th Cir. 2016)	22
9	6. <i>Webb v. City of Philadelphia</i> , 562 F. 3rd, 256, (2009)	23
10		
11		
12		
13	7. United States Constitution, Amendment I	16, 18
14	8. United States Constitution, Amendment XIV	15, 16, 22
15	9. United States Constitution, Article VI, Clause II	14
16	10. United States Constitution, Article VI, Clause III	14
17		
18		
19		
20	11. Federal Rules of Civil Procedure 65(c)	23
21		
22		
23		
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1 **I. NOTICE OF MOTION**

2 Please take notice that on March 21, 2023, at 10:00 am, in Courtroom #2 on the 5th Floor
 3 of the United States District Court – San Jose Division, located at 280 South 1st Street, San Jose,
 4 CA 95113, before the Honorable Virginia K. DeMarchi, I will and hereby do move for an order
 5 granting this Motion for Preliminary Injunction.

6 The Motion will be based on this Notice and Motion and its Memorandum in Support,
 7 Plaintiff's Declaration and its exhibits, Plaintiff's Verified Complaint, and the [Proposed] Order.
 8

9
 10 **II. RELIEF SOUGHT**

11 Plaintiff seeks an immediate preliminary injunction from this Court, enjoining Defendants
 12 from infringing upon and denying Plaintiff's constitutionally-protected rights to free speech, free
 13 exercise of religion, and equal protection under the law, in The United States of America.

14 **RELIEF SOUGHT - BACKGROUND**

15 This matter arises from Defendants infringing upon and denying Plaintiff's constitutionally-
 16 protected right to equal protection under the law, in conjunction with Defendants infringing upon
 17 and denying Plaintiff's constitutionally-protected rights to free speech and free exercise of religion
 18 in comparison to the free speech rights of other similarly situated persons whose free speech has
 19 not been infringed upon by Defendants, but rather has been encouraged and assisted by the
 20 Defendants, and by doing so Defendants are further infringing upon and denying Plaintiff's right to
 21 equal protection under the law.
 22

23 As outlined in Plaintiff's Verified Complaint, Defendants' actions are causing an
 24 irreconcilably unconstitutional governmental predisposition of sexual bias, preference, favoritism,
 25 prejudice, and segregationist intent, to be inflicted against Plaintiff, which is denying Plaintiff's
 26 right to equal protection under the law in The United States of America.

27 Plaintiff was a Police Officer with the CITY OF SAN JOSE. Defendants, among other
 28

1 things, recently desecrated the sacrosanct neutral and impartial visual appearance of *The Uniform*
2 of the San Jose Police Department with a visible display of the personal “LGBTQ pride” speech of
3 individual officers, which is explicitly defined by the Defendants as representing only “Lesbian,
4 Gay, Bi-sexual, Transgender, and Queer pride”, thereby inflicting onto *The American Uniform* a
5 visible governmental predisposition of sexual bias, preference, favoritism, prejudice, and
6 segregationist intent, against Plaintiff, and all other Officers and Americans, and this biased sexual
7 segregation, which Defendants implemented to explicitly target and segregate the class and
8 personal and sexual characteristics of Plaintiff, and all other Officers and Americans, is
9 unconstitutionally infringing upon and denying Plaintiff’s right to equal protection under the law in
10 The United States of America.

12 Furthermore, Defendants admitted, in writing, that the shoulder patch on *The Uniform* of
13 the San Jose Police Department was altered with the specific intent to “allow department members
14 to show individual support for issues important to them.”

15 However, Defendants have denied and censored Plaintiff’s free speech in this now-open
16 forum, in comparison to the free speech of other similarly situated officers whose free speech has
17 not been denied or censored by Defendants. As such, Defendants have now also infringed on
18 Plaintiff’s rights to free speech, and free exercise of religion, in comparison to the free speech
19 rights of other similarly situated officers, and thereby Defendants are casting Plaintiff and his
20 speech into a suspect class and denying and censoring Plaintiff’s speech explicitly because of
21 Plaintiff’s class and personal and sexual characteristics, thereby further denying Plaintiff’s right to
22 equal protection under the law in The United States of America.

24 Plaintiff has suffered, is suffering, and will continue to suffer, irreparable harm because of
25 Defendants’ infringements upon Plaintiff’s constitutionally-protected rights. Plaintiff seeks the
26 following immediate injunctive relief accordingly.

INJUNCTIVE RELIEF SOUGHT

Plaintiff seeks an immediate preliminary injunction, enjoining the Defendants and all persons in active concert with the Defendants, from any of the following acts, whether committed directly or indirectly or by any means whatsoever:

1. having a biased and segregationist "LGBTQ Advisory Board" at the San Jose Police Department;
2. having a biased and segregationist "LGBTQ Liaison Officer" position at the San Jose Police Department;
3. displaying a biased and segregationist "LGBTQ pride" flag at the San Jose Police Department;
4. allowing the display of a biased and segregationist "LGBTQ pride" shoulder patch on *The Uniform* of the San Jose Police Department;
5. and any other similar acts that violate and deny Plaintiff's constitutionally-protected right to equal protection under the law in The United States of America;

because these governmental acts by Defendants are now currently inflicting an irreconcilably unconstitutional and visibly self-evident governmental predisposition of sexual bias, preference, favoritism, prejudice, and segregationist intent, against Plaintiff, and all Officers and all Americans who must receive blind-justice, and this clearly-defined sexual segregation, exclusion, disparate treatment, and subsequent mistreatment of Plaintiff explicitly because of Plaintiff's class and sexual characteristics in comparison to similarly situated persons, is indisputably and outright denying Plaintiff's constitutionally-protected right to equal protection under the law in The United States of America.

Defendants, and all persons in active concert with them, must immediately stop, disband, and abolish these enjoined acts, and Defendants must take all clear and affirmative action that is necessary to support, protect, and defend the constitutionally-protected rights of Plaintiff, and all

1 other Officers and Americans.

2
3 CONFLICTING RELIEF REQUIRED IN THE ABSENCE OF THE INJUNCTIVE RELIEF

4 Furthermore, Defendants have simultaneously infringed on Plaintiff's constitutionally-
5 protected rights to free speech and free exercise of religion. As such, absent the immediate
6 abovementioned constitutionally-compliant and proper injunctive relief by this Court to protect the
7 sacrosanct neutral and impartial display of *The American Flag* as it is seen and witnessed by all
8 Officers and all Americans who are equally represented in *The American Flag* that flies over the San
9 Jose Police Department; and absent the proper immediate injunctive relief by this Court to protect
10 the sacrosanct neutral and impartial visual appearance of *The American Uniform* as it is seen and
11 witnessed by all Officers and all Americans who are equally represented in *The Uniform* of the San
12 Jose Police Department; whereas the neutral and impartial visual display of these American public
13 symbols of blind-justice at an American police department visually communicates to all Americans
14 that all people shall, and in fact do, receive blind-justice and equal protection under the law;
15 Defendants, and all persons in active concert with the Defendants, who have desecrated the neutral
16 and impartial governmental public image of the San Jose Police Department, as outlined here and in
17 Plaintiff's Verified Complaint, would then also have to be enjoined by this Court from infringing
18 upon Plaintiff's constitutionally-protected rights to free speech and free exercise of religion, in the
19 now-open forums of:

- 20
21
22 i. *The Uniform* patches of the San Jose Police Department;
23 ii. the flagpole of the San Jose Police Department;
24 iii. on San Jose Police Department police vehicles;
25 iv. and all other forums that are connected by constitutional nexus, to include
26 forums that Plaintiff may not be aware of, but is still being unconstitutionally
27 censored, segregated, and deprived of equal access to, in comparison to
28

1 similarly situated persons and officers;
 2 thereby ensuring that Plaintiff's free speech will also receive the same equal treatment as the free
 3 speech of other similarly situated persons and individual officers whose personal speech has also
 4 been further promoted through:

- 5 v. official recognition in published department memorandums that officially
 6 promoted the personal speech of individual officers and informed all other
 7 officers that the patches on *The Uniform* were intended to "allow department
 8 members to show individual support for issues important to them";
- 9 vi. and equal recognition in department-curated social media and public
 10 communications, etcetera.
 11

12 13 **III. CONCISE STATEMENT OF THE ISSUES TO BE DECIDED**

- 14 1. That Plaintiff will succeed on the merits of the constitutional claims.
- 15 2. That Plaintiff will continue to suffer irreparable harm without injunctive relief.
- 16 3. That the balance of equities favors injunctive relief for Plaintiff.
- 17 4. That Plaintiff's injunctive relief is in the public interest.
- 18 5. That no bond be inflicted against Plaintiff for seeking constitutionally-protected rights.

19 20 21 **IV. MEMORANDUM IN SUPPORT**

22 **STATEMENT OF FACTS**

23 The following statement of facts is a very brief summary of facts that are narrowly relevant
 24 to this Motion so as to provide background information for the Motion. As such, this statement of
 25 facts is only a partial list of facts in this case, which are outlined in greater detail in Plaintiff's
 26 Verified Complaint ("VC").

27 Plaintiff was a Police Officer with the CITY OF SAN JOSE (Declaration paragraph #4, and
 28

1 VC). Plaintiff's employment as a Police Officer was terminated after Plaintiff criticized the
2 unconstitutional actions of Defendants, and after Plaintiff demanded the same free speech and other
3 rights as similarly situated officers (D #15, 16, 17, 18, 19, 21, 23, 25, 26, 27, 28, Exhibit-A; and
4 VC).

5 Defendants implemented segregated policing at the San Jose Police Department, explicitly
6 because of the class and personal and sexual characteristics of Plaintiff and all other Officers and
7 all other American Citizens (D #5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and VC). In particular, Defendants
8 created an "LGBTQ Advisory Board" and an "LGBTQ Liaison Officer" position at the San Jose
9 Police Department, which are segregating and excluding Plaintiff and all Officers and all
10 Americans explicitly because of our class and personal and sexual characteristics (D #5, 6, 7, 8, 14,
11 and VC).

12
13 As admitted by the Defendants, the "LGBTQ Advisory Board" and the "LGBTQ Liaison
14 Officer" position only represent, and advocate for, persons who identify as "Lesbian, Gay, Bi-
15 sexual, Transgender, and Queer", and the "LGBTQ Liaison Officer" position is reserved only for
16 officers who identify as "Lesbian, Gay, Bi-sexual, Transgender, and Queer" (D #6, 8, 14, and VC),
17 thereby segregating, excluding, and discriminating against Plaintiff, and all other Officers and
18 Americans, explicitly because of our class and sexual characteristics, and this is denying Plaintiff's
19 right to equal protection under the law in The United States of America.

20
21 Defendants further increased and celebrated the biased exclusion and segregation of
22 Officers and Americans when Defendants raised an "LGBTQ pride" flag at police headquarters,
23 and Defendants created an "LGBTQ pride" patch for officers to display on *The Uniform* of the San
24 Jose Police Department (D #9, 10, 11, 12, 13; and VC). Defendants clearly defined that these
25 actions, symbols, and speech, pertained only to "LGBTQ pride", which by Defendants' own
26 admitted definition includes only persons who identify as "Lesbian, Gay, Bi-sexual, Transgender,
27 and Queer", thereby segregating and excluding Plaintiff and all other Officers and American
28

1 Citizens who are not included in the narrow and explicit definition of “LGBTQ” (D #9, 10, 11, 12,
2 13, 14; and VC).

3 Defendants admitted, in writing, that the shoulder patch on *The Uniform* of the San Jose
4 Police Department was altered with the specific intent to “allow department members to show
5 individual support for issues important to them.” (D #13; and VC). As such, Defendants created a
6 forum for the personal speech of individual officers (D #11, 13; and VC). Defendants further
7 allowed and assisted individual officers with publicly speaking and communicating about their own
8 personal “LGBTQ pride” message and associated speech (D #11, 13; and VC).

9
10 On November 11, 2020, Plaintiff routed a memorandum to Defendant GARCIA (D #15, 16,
11 Exhibit-A; and VC). Plaintiff criticized the actions of Defendants, and Plaintiff demanded the
12 same free speech and equal rights as similarly situated officers (D #15, 16, 17, 18; and VC).
13 Plaintiff’s free speech demands created additional constitutional and legal leverage in this matter,
14 beyond the initial Equal Protection claims (D #15, 16, 17, 18; and VC).

15 On November 13, 2020, Defendants placed Plaintiff on administrative leave (D #19; and
16 VC). On December 11, 2020, Defendants sent Plaintiff a letter which officially denied Plaintiff’s
17 demands for free speech, through Plaintiff’s flag and patch designs which were denied and
18 censored by Defendants (D #20, Exhibit-B; and VC).

19
20 On June 7, 2021, after approximately a half-year on administrative leave without any
21 formal department contact, Defendants sent Plaintiff notice of a department-initiated Internal
22 Affairs complaint against him (D #21, Exhibit-C; and VC). The very next day, on June 8, 2021,
23 Plaintiff received a department-wide email that was sent by Defendants, and the email stated that
24 Defendants were going to raise an “LGBTQ pride” flag at police headquarters on June 8, 2021, but
25 a follow-up email within less than an hour corrected the date of the “LGBTQ pride” flag raising to
26 the following day on June 9, 2021 (D #22, Exhibit-D; and VC).

27 The timing of Plaintiff’s Internal Affairs notice coincided with Defendants’ “LGBTQ
28

pride” notices and events, all of which occurred at essentially the exact same time in the month of June, at a time that Defendants have described as “LGBTQ pride” month (D #21, 22, 24; and VC). This timing shows retaliation against Plaintiff explicitly because of Plaintiff’s class and personal and sexual characteristics, thereby denying Plaintiff’s right to equal protection under the law. Subsequently, on June 17, 2021, Plaintiff received notice that he would be interrogated by Internal Affairs (D #23; and VC).

On August 19, 2021, Plaintiff was subjected to an all-day interrogation by Internal Affairs (D #25; and VC).

Ultimately, on February 11, 2022, Plaintiff was served with Defendants’ Notice of Discipline which stated that Plaintiff’s employment as a Police Officer for the CITY OF SAN JOSE was terminated, effective February 12, 2022 (D #26; and VC), for reasons that subjectively and selectively included some of the topics of Plaintiff’s free speech flag and patch designs (D #27; and VC). Plaintiff appealed, but the CITY OF SAN JOSE denied the administrative appeal (D #28; and VC).

On December 8, 2022, Plaintiff filed his Verified Complaint to seek relief from the Defendants infringing upon Plaintiff’s constitutionally-protected rights to free speech, free exercise of religion, and equal protection under the law, in The United States of America (D #29, and VC).

ARGUMENT

Introduction

This matter arises from Defendants infringing upon Plaintiff’s constitutionally-protected rights to free speech, free exercise of religion, and equal protection under the law. It involves unconstitutional governmental censorship, and unconstitutional government-inflicted segregation. Defendants’ actions have resulted in a predisposition of sexual bias, preference, favoritism, prejudice, and segregationist intent, to be inflicted against Plaintiff, and Defendants have also

1 caused that same sexual bias to be visibly and publicly displayed by uniformed executive officers
2 of the San Jose Police Department. This deprivation of blind-justice, as visibly communicated and
3 displayed by American police officers who are uniformed executive officers within The United
4 States, has further denied Plaintiff's right to equal protection under the law in The United States of
5 America.

6 Defendants' continued governmental infringement on Plaintiff's constitutionally-protected
7 First Amendment and Fourteenth Amendment rights will not withstand any constitutional scrutiny.
8 Plaintiff seeks immediate injunctive relief accordingly.
9

10 11 **Legal Standard**

12 Courts around The United States employ a similar legal standard for evaluating a plea for
13 injunctive relief. "A plaintiff seeking a preliminary injunction must establish that he is likely to
14 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary
15 relief, that the balance of equities tips in his favor, and that an injunction is in the public interest."
16 (*Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). The circumstances as outlined in
17 this Motion and in Plaintiff's Verified Complaint show that Plaintiff meets this legal standard, and
18 therefore Plaintiff should be granted injunctive relief.
19

20 21 **Success on the Merits**

22 Plaintiff will succeed on the merits of his constitutional claims. Plaintiff has raised four
23 claims: (1) Defendants have violated the Free Speech Clause of the First Amendment by censoring
24 Plaintiff's speech, through content- and viewpoint-based restriction and discrimination, where free
25 speech was allowed for others; (2) Defendants have violated the Free Exercise Clause of the First
26 Amendment by censoring and prohibiting Plaintiff's religious speech where secular free speech
27 was allowed for others; (3) Defendants have violated the Equal Protection Clause of the Fourteenth
28

Amendment by treating both Plaintiff's secular speech and religious speech unequally, and with class-based hostility, in comparison to the free speech of other similarly situated persons; and (4) Defendants have further violated the Equal Protection Clause of the Fourteenth Amendment by actively implementing unconstitutional governmental segregation at the San Jose Police Department in multiple forms so that sexual bias, preference, favoritism, prejudice, and segregationist intent, is being inflicted against Plaintiff, and this is actively and currently causing Plaintiff to be treated unequally in comparison to similarly situated persons so that Plaintiff is being treated as a suspect class by the governmental Defendants who are segregating, excluding, and discriminating against Plaintiff explicitly because of Plaintiff's class and personal and sexual characteristics, thereby indisputably denying Plaintiff's constitutionally-protected right to equal protection under the law in The United States of America.

These are irreconcilably unconstitutional violations of Plaintiff's constitutionally-protected rights, and as such these violations will never withstand any level of constitutional scrutiny.

Plaintiff will succeed on the merits accordingly.

Blind-Justice and Equal Protection

Claim #4

Because of the dire constitutional implications of Claim #4, it is addressed here first.

The Uniform of America's police officers is a universal and self-evident visual symbol of blind-justice in America, because the sacrosanct neutral and impartial visual appearance of *The American Uniform*, as it is seen and witnessed by all people, is fundamental to the constant public perception and visual confirmation by all Americans that there is universal blind-justice and equal protection under the law in The United States of America.

Never in American History has the sacrosanct neutral and impartial visual appearance of *The American Uniform* ever been officially desecrated with visible bias. As outlined in Plaintiff's

1 Verified Complaint, *The Uniform* of the San Jose Police Department has essentially been
2 unchanged since the Department's founding in 1849, and accordingly all Americans have been
3 equally represented in *The Uniform* of the San Jose Police Department which has been the visual
4 symbol of blind-justice and equal protection under the law for all Americans who have ever seen a
5 San Jose Police Officer wearing *The Uniform* of the San Jose Police Department.

6 But now, Defendants' recent actions of desecrating *The Uniform* with visible "Lesbian,
7 Gay, Bi-sexual, Transgender, and Queer pride" speech and the accompanying sexual bias that it
8 displays, has unsurprisingly caused visibly observable sexual bias, preference, favoritism,
9 prejudice, and segregationist intent, to be displayed and inflicted against Plaintiff, and all other
10 Officers and Americans, who are now being segregated, excluded, and discriminated against by
11 Defendants explicitly because of our class and personal and sexual characteristics, and as such
12 Defendants are now depriving everyone of blind-justice and equal protection under the law in The
13 United States of America.

14 Because this attack on the neutral and impartial visual appearance of *The American*
15 *Uniform* has only just recently been committed by the Defendants, Plaintiff is not aware of any
16 caselaw that does, or even could, exist. As such, Plaintiff's current case will likely be the
17 precedent-setting case for this constitutional crisis.

18 While no caselaw may exist, Defendants' actions are clearly demonstrated and understood
19 to be irreconcilably unconstitutional at conception. Despite the explanation from the preceding
20 paragraphs, and as outlined in the Verified Complaint, the fact is that The Constitution itself
21 predicts the doomed fate of Defendants' desecration of *The American Uniform* with visible bias.

22 The Constitution of The United States of America is "the supreme law of the land" (US
23 Const., Art. VI, Cls. II). Furthermore, "all executive and judicial officers, both of the United States
24 and of the several states, shall be bound by oath or affirmation, to support this Constitution" of
25 The United States of America (US Const., Art. VI, Cls. III). And the Fourteenth Amendment
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27
28

1 reconfirms that all people in America shall have “the equal protection of the laws.” (US Const.,
2 Am. XIV).

3 Police Officers are armed, uniformed executive officers in The United States of America.
4 Accordingly, Police Officers are sworn by *Oath* to support and defend The Constitution of The
5 United States of America. As such, Police Officers are sworn by *Oath* to provide equal protection
6 under the law to all Americans. Therefore, an American police department shall not “deny to any
7 person within its jurisdiction the equal protection of the laws.” (US Const., Am. XIV). Regardless
8 of whether committed by an agency or by individual executive officers, any act that violates these
9 constitutional mandates is clearly unconstitutional and impermissible in America.

10
11 As such, Defendants’ unconstitutional actions at an American police department, which
12 include: creating a biased and segregationist “LGBTQ Advisory Board”; creating a biased and
13 segregationist “LGBTQ Liaison Officer” position; raising a biased and segregationist “LGBTQ
14 pride” flag against *The American Flag*; and creating and allowing a biased and segregationist
15 “LGBTQ pride” shoulder patch to inflict visible sexual bias onto *The Uniform* of the San Jose
16 Police Department; have resulted in Defendants actively causing tangible and visible governmental
17 sexual bias, preference, favoritism, prejudice, and segregationist intent, to be publicly displayed
18 and inflicted against all Americans who are now being segregated explicitly because of our class
19 and personal and sexual characteristics, thereby denying all Americans our right to equal protection
20 under the law in The United States of America.

21
22 When this display of visible sexual bias is committed by uniformed executive officers and
23 causes Americans to be segregated into a suspect class, that visible predisposition of governmental
24 sexual bias is a deprivation of blind-justice and is a visibly self-evident and outright
25 unconstitutional denial of equal protection under the law. As such, Defendants cannot uphold their
26 *Oath* of providing constitutionally-mandated equal protection under the law to all Americans while
27 Defendants are committing the unconstitutional act of segregating, excluding, and discriminating
28

1 against all Americans explicitly because of our class and personal and sexual characteristics. In
2 this act, Defendants are in fact denying equal protection under the law to all Americans.

3 Consequently, *reasonable doubt* now exists in regard to the constitutional authority and
4 constitutional validity of any *Search and Seizure* that is conducted by a visibly biased officer and
5 biased law enforcement agency that are visibly communicating and displaying a governmental
6 predisposition of sexual bias, preference, favoritism, prejudice, and segregationist intent, against all
7 Americans, thereby denying equal protection under the law to all Americans. Again, Police
8 Officers are executive officers within The United States of America, and as such an American
9 police department shall not “deny to any person within its jurisdiction the equal protection of the
10 laws.” (US Const., Am. XIV).

12 Despite this constitutional mandate, Defendants are causing the San Jose Police Department
13 to deny equal protection to Plaintiff, and all Officers and all Americans, explicitly because of our
14 class and sexual characteristics.

15 It is clear that Plaintiff will succeed on the constitutional merits of this Equal Protection
16 claim.

18 Freedom of Speech

20 Claim #1

21 Plaintiff’s intent is to protect the sacrosanct neutral and impartial visual appearance of *The*
22 *Uniform* of the San Jose Police Department. As a means to that end, Plaintiff created a “Legal
23 Conundrum” for the Defendants which Plaintiff is now using as constitutional leverage to
24 guarantee the restoration of the neutral and impartial visual appearance of *The American Uniform*.

25 The First Amendment is explicitly clear in stating that the government shall not engage in
26 “abridging the freedom of speech” (US Const., Am. I). As outlined in the Verified Complaint,
27 Defendants admitted, in writing, that the shoulder patch on *The Uniform* of the San Jose Police
28

1 Department was altered with the specific intent to “allow department members to show individual
2 support for issues important to them.” Defendants therefore cannot engage in content- or
3 viewpoint-based restrictions or discrimination in this now-open forum, or any other similar forum
4 that is connected by constitutional nexus (VC pg. 28, #126).

5 Plaintiff submitted flag and patch designs as part of Plaintiff’s demands for free speech.
6 Defendants denied and censored Plaintiff’s free speech, despite allowing the free speech of others.
7 Defendants also censored Plaintiff’s free speech on the exact same topic of sexual-orientation that
8 had been brought up by the Defendants themselves. As part of Plaintiff’s free speech on the topic,
9 Plaintiff presented a “hetero-sexual pride” patch in direct juxtaposition to the “LGBTQ pride”
10 (homo-sexual pride) patch that the Defendants were allowing other individual officers to use as
11 part of their personal free speech on the topic of sexual-orientation.
12

13 Defendants’ denial and censorship of Plaintiff’s contrasting free speech, on the exact same
14 topic of sexual-orientation that was instigated by the Defendants themselves, is clearly an
15 unconstitutional governmental restriction against Plaintiff’s free speech on the topic. This is
16 content- and viewpoint-based censorship of Plaintiff’s speech. “When the government targets not
17 subject matter, but particular views taken by speakers on a subject, the violation of the First
18 Amendment is all the more blatant.” (*Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S.
19 819, 828 (1995)). Defendants have not only denied and censored Plaintiff’s free speech in general,
20 but Defendants have also specifically denied and censored Plaintiff’s free speech on the topic of
21 sexual-orientation explicitly because of the viewpoint of Plaintiff’s speech, despite Plaintiff’s
22 speech being on the exact same topic of speech that was instigated by the Defendants themselves.
23

24 It is clear that Plaintiff will succeed on the constitutional merits of this Free Speech claim.
25
26
27
28

1 Free Exercise of Religion

2 Claim #2

3 Again, Plaintiff's intent is to protect the sacrosanct neutral and impartial visual appearance
4 of *The Uniform* of the San Jose Police Department. In continuation of the "Legal Conundrum" that
5 Plaintiff has created for the Defendants, Plaintiff's Free Exercise claim provides constitutional
6 leverage, because Plaintiff will succeed on the merits of this claim.

7
8 The First Amendment is explicitly clear in stating that the government shall not engage in
9 the "establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of
10 speech" (US Const., Am. I). Again, as outlined in the Verified Complaint, Defendants admitted, in
11 writing, that the shoulder patch on *The Uniform* of the San Jose Police Department was altered
12 with the specific intent to "allow department members to show individual support for issues
13 important to them." Defendants therefore cannot engage in content- or viewpoint-based
14 restrictions or discrimination in this now-open forum, or any other similar forum that is connected
15 by constitutional nexus (VC pg. 28, #126).

16 Plaintiff submitted flag and patch designs as part of Plaintiff's demands for free speech.
17 Defendants denied and censored Plaintiff's free speech, which included religious speech, despite
18 Defendants allowing the secular free speech of others. This demonstrates a hostility towards
19 religious speech where secular speech was allowed for others. Defendants allowed the secular free
20 speech of similarly situated individual officers, therefore Defendants cannot deny Plaintiff's
21 religious free speech in the now-open forums.

22
23 Recently, the United States Supreme Court issued a unanimous 9-0 ruling reaffirming the
24 prohibition against the unconstitutional governmental restriction of religious speech where secular
25 free speech was allowed for others (*Shurtleff v. Boston*, 596 U.S. (2022)).

26 While Plaintiff's current case is not identical to *Shurtleff*, some of the same constitutional
27 circumstances regarding free speech and the free exercise of religion overlap, and the precedent of
28

1 *Shurtleff* will similarly sustain Plaintiff's constitutional claims, thereby further showing that
 2 Plaintiff will succeed on the constitutional merits of this Free Exercise claim.

3 4 Equal Protection and Equal Treatment

5 Claim #3

6 Defendants have violated the Equal Protection Clause of the Fourteenth Amendment by
 7 treating both Plaintiff's secular speech and religious speech unequally in comparison to the speech
 8 of other similarly situated persons. Additionally, as outlined above in Claim #4, Defendants also
 9 treated *Plaintiff* unequally explicitly because of Plaintiff's class and personal and sexual
 10 characteristics. While this Claim #3 is related to the Equal Protection claim of Claim #4 as
 11 discussed above, both claims have Equal Protection implications that are distinct to each claim
 12 respectively.
 13

14 In this Claim #3, Defendants have denied Plaintiff's right to equal protection under the law
 15 by treating both Plaintiff's secular speech, and religious speech, unequally in comparison to the
 16 free speech of other similarly situated persons. This unequal and hostile treatment of Plaintiff's
 17 secular and religious speech was explicitly because of the classes and personal and sexual
 18 characteristics that were represented in Plaintiff's secular and religious free speech, thereby
 19 Defendants cast Plaintiff and Plaintiff's speech into a suspect class and unconstitutionally infringed
 20 upon and outright denied Plaintiff's right to equal protection under the law.
 21

22 Again, as outlined in the Verified Complaint, Defendants admitted, in writing, that the
 23 shoulder patch on *The Uniform* of the San Jose Police Department was altered with the specific
 24 intent to "allow department members to show individual support for issues important to them."
 25 Defendants therefore cannot engage in content- or viewpoint-based restrictions or discrimination in
 26 this now-open forum, or any other similar forum that is connected by constitutional nexus (VC pg.
 27 28, #126).
 28

1 Plaintiff's free speech flag and patch designs included speech on Plaintiff's classes and
2 personal and sexual characteristics. Plaintiff's speech included speech on race, color, religious
3 creed, sex, and sexual-orientation, among other speech. Defendants denied and censored Plaintiff's
4 speech explicitly because of Plaintiff's class and personal and sexual characteristics, thereby
5 casting Plaintiff into a suspect class and denying Plaintiff equal protection under the law.

6 Defendants cannot censor and thereby treat Plaintiff's speech about class and personal and
7 sexual characteristics unequally, unfavorably, and with hostility, in comparison to the free speech
8 of other similarly situated persons who are free to speak about their self-identified class and
9 personal and sexual characteristics with the governmental approval of Defendants. Defendants also
10 cannot treat religious speech unequally where secular free speech was allowed for others.

11 Segregating Americans and subjecting Americans to preferential or unfavorable treatment
12 explicitly because of our class and personal and sexual characteristics, and then causing some
13 Americans to be treated as a suspect class by the government in comparison to similarly situated
14 persons, is blatantly unconstitutional and in violation of the Equal Protection Clause. Defendants
15 have inflicted this very harm against Plaintiff explicitly because of Plaintiff's class and personal
16 and sexual characteristics, thereby infringing upon and denying Plaintiff's right to equal protection
17 under the law in The United States of America.

18 It is clear that Plaintiff will succeed on the constitutional merits of this additional Equal
19 Protection claim.

20 **Irreparable Harm**

21 The denial of Plaintiff's constitutionally-protected rights to free speech, free exercise of
22 religion, and equal protection under the law, is causing Plaintiff to suffer irreparable harm.
23 Plaintiff has already suffered this harm, Plaintiff is currently suffering this harm, and Plaintiff will
24 continue to suffer this irreparable harm absent injunctive relief. As such, "when reviewing a
25
26
27
28

1 motion for preliminary injunction, if it is found that a constitutional right is being threatened or
2 impaired, a finding of irreparable injury is mandated.” (*Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th
3 Cir. 2001)). Plaintiff has demonstrated that he will succeed on the constitutional merits of his
4 claims because he has suffered irreparable injury at the hands of the Defendants, who are violating
5 Plaintiff’s rights that are protected by the First Amendment and Fourteenth Amendment. As such,
6 it is clear that Plaintiff will continue to suffer irreparable harm if these unconstitutional
7 infringements continue.

8
9 Without injunctive relief, it is clear that Plaintiff will continue to suffer irreparable harm.

10 11 **Balance of Equities Favors Plaintiff**

12 Defendants are depriving Plaintiff of his constitutionally-protected rights. Plaintiff seeks to
13 restore his rights. In particular, stopping Defendants from denying equal protection under the law
14 will benefit all Americans equally. As such, no harm could possibly come to anyone else if all
15 people in America are treated equally by the government.

16 As such, the issuance of an injunction tips entirely in Plaintiff’s favor. An injunction will
17 restore the constitutionally-mandated status quo of when all Americans received blind-justice and
18 equal protection under the law from the San Jose Police Department, before Defendants’ recent
19 unconstitutional actions that just instigated this crisis and controversy. The governmental
20 deprivation of blind-justice and unconstitutional denial of equal protection under the law hurts
21 everyone in America, so clearly the balance of equities favors granting injunctive relief for
22 Plaintiff, because the actual loss of constitutionally-protected rights cannot even be compared to
23 the subjective political interests of the Defendants.
24

25 26 **Injunctive Relief is in the Public Interest**

27 Again, the government shall not “deny to any person within its jurisdiction the equal
28

1 protection of the laws.” (US Const., Am. XIV). Defendants have infringed upon and denied
2 Plaintiff’s constitutionally-protected right to equal protection under the law, explicitly because of
3 Plaintiff’s class and personal and sexual characteristics.

4 Stopping the Defendants from denying equal protection under the law, will benefit both
5 Plaintiff and all Americans equally. An injunction for Plaintiff is also in the public interest for all
6 Americans who must receive blind-justice and equal protection under the law from the San Jose
7 Police Department.

8 Since 1849, the San Jose Police Department has faithfully presented its governmental
9 public image in a completely neutral, impartial, and unbiased manner, and this has always visibly
10 communicated and confirmed the public perception that blind-justice and equal protection under
11 the law are uniformly presented to all Americans by the San Jose Police Department.

12 However, Defendants’ very recent actions have desecrated this historical tradition in a way
13 that now visibly denies blind-justice and denies equal protection under the law. Every single
14 American is being harmed by Defendants’ actions, and Plaintiff’s injunctive relief will benefit all
15 people in The United States of America.

16 It is in the public interest for all Americans to continue to enjoy equal protection under the
17 law, as we always did, until Defendants’ very recent unconstitutional actions. For that reason, the
18 public interest is served by immediately restoring the time-honored status quo so that all Americans
19 enjoy equal protection under the law from the San Jose Police Department. Injunctive relief to this
20 effect is in the public interest because, “[t]he ‘purpose of a preliminary injunction is to preserve the
21 status quo ante litem pending a determination of the action on the merits’;” and the term “[s]tatus
22 quo ante litem’ refers to ‘the last uncontested status which preceded the pending controversy’”.
23 (*Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1024 (9th Cir. 2016)).

24 It is clear that granting injunctive relief to Plaintiff will also be granting injunctive relief to
25 all Americans by preserving the status quo of equal protection under the law for all Americans, and
26

as such Plaintiff's injunctive relief is clearly in the public interest.

No Bond Should Be Inflicted for Seeking the Preservation of Rights

In granting Plaintiff's injunctive relief, this Court should exercise its discretion and not impose any bond under Federal Rule of Civil Procedure 65(c). Imposing a bond against Plaintiff for seeking the preservation of Plaintiff's constitutionally-protected rights would further harm Plaintiff's rights. Simply stopping the Defendants from continuing to engage in their recently-initiated unconstitutional actions that are infringing upon Plaintiff's rights, and thereby requiring the Defendants to provide the same equal treatment to Plaintiff and all Americans, will not result in any monetary cost to the Defendants.

ADDITIONAL INFORMATION OF NOTE

While no caselaw exists on the recent unconstitutional situation that the Defendants have created, it is worth noting that extensive caselaw does exist regarding the constitutional validity of *Search and Seizure* when judged in relation to how police officers announce and visibly present themselves, both in uniform and in marked/lighted police vehicles, during enforcement contacts.

And police uniform standards have been upheld in religious clothing accommodation cases so as to prevent attachment of an individual's personal identity to a police officer's uniform which is a neutral symbol of public trust (*Webb v. City of Philadelphia*, 562 F. 3rd, 256, (2009)).

Additionally, although the free speech issues in this case indisputably involve the personal speech of individuals that is clearly not government speech (VC pg. 28, #126), as clearly shown in Claim #4 a police department and its executive officers cannot engage in any "government speech" that denies equal protection to all Americans. When a uniformed executive officer engages in any biased public speech, regardless of whether the speech is personal or governmental, and the speech has misappropriated and compromised the neutral and impartial governmental public image of an

1 American police department so as to inflict a governmental predisposition of sexual bias,
2 preference, favoritism, prejudice, and segregationist intent, against all Americans explicitly
3 because of our class and personal and sexual characteristics, this is an irreconcilably
4 unconstitutional denial of equal protection that shall not exist in America. So, any attempt to
5 distract with a “government speech” argument would be completely irrelevant and futile.
6

7 CONCLUSION

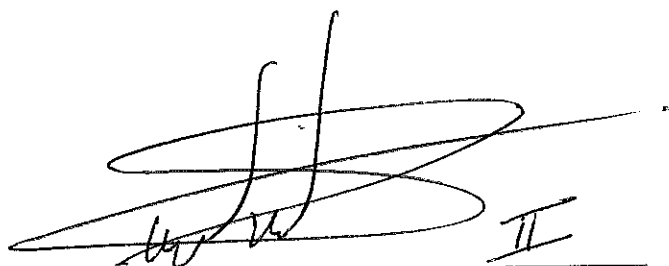
8
9 Plaintiff seeks to restore equal protection under the law for all Americans, and Plaintiff
10 seeks to have Defendants cease their irreconcilably unconstitutional segregation of Plaintiff and all
11 Americans. Defendants’ actions will not withstand any constitutional scrutiny, because Defendants
12 cannot justify violating Plaintiff’s rights that are protected by the First Amendment and Fourteenth
13 Amendments of The Constitution of The United States of America.

14 As such, Plaintiff respectfully requests this Court to immediately grant Plaintiff’s Motion
15 for Preliminary Injunction.
16

17 ORAL ARGUMENT REQUESTED

18 Plaintiff requests that the Court conduct oral argument on this Motion because Plaintiff
19 believes that oral argument will assist the Court in determining the issues in a responsive setting.
20
21

22
23
24
25
26 Dated: February 8, 2023

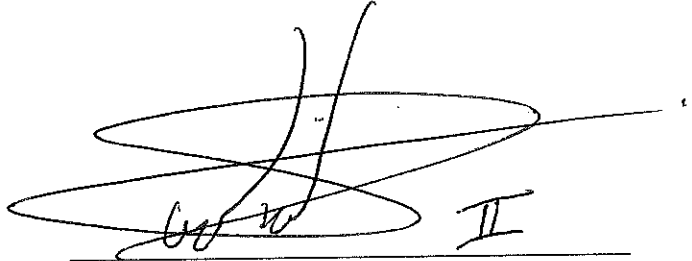
A handwritten signature in black ink, appearing to read 'William Gerard Sangervasi II', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

WILLIAM GERARD SANGERVASI II

Pro Se Plaintiff

CERTIFICATE OF SERVICE

I, WILLIAM GERARD SANGERVASI II, certify that I will cause this Motion, along with its Declaration and attached exhibits, and the [Proposed] Order, to be served on all Defendants, and detailed Proof of Service will be filed with this Court soon thereafter.

A handwritten signature in black ink, appearing to read 'W. G. Sangervasi II', is written over a horizontal line. The signature is stylized with large, sweeping loops.

Executed on: February 8, 2023

WILLIAM GERARD SANGERVASI II